



2011 SENATE BILL 429

February 6, 2012 – Introduced by Senators LASEE and SCHULTZ, cosponsored by Representatives NYGREN, BROOKS and MOLEPSKE JR. Referred to Committee on Insurance and Housing.

- 1 **AN ACT** *to create* 628.02 (1) (b) 9. and 632.975 of the statutes; **relating to:**
2 portable electronics insurance and providing a penalty.

Analysis by the Legislative Reference Bureau

This bill establishes criteria for selling and offering portable electronics insurance and sets other requirements regarding the sale of portable electronics insurance. Under current law, a person may not solicit, negotiate, or place insurance or advise others about insurance needs and coverage without a certificate of authority or a license as an insurance intermediary, either as an agent or a broker. The bill allows a vendor or an employee or authorized representative of a vendor of portable electronics to sell or offer portable electronics insurance without a certificate of authority or a license as an intermediary if: 1) the vendor complies with the requirements created in the bill; 2) the insurer issuing the portable electronics insurance supervises, or hires an entity to supervise, the administration of the sale of portable electronics insurance; 3) any supervising entity that is appointed by an insurer to supervise the administration of a portable electronics insurance program maintains a registry of the vendor locations that are authorized to sell or offer portable electronics insurance; and 4) the employee or authorized representative intending to sell or offer portable electronics insurance completes a training program as described in the bill.

A vendor of portable electronics is prohibited under the bill from compensating an employee or authorized representative based primarily on the number of customers enrolled in portable electronics insurance coverage, but the vendor may compensate an employee or authorized representative, in a manner that is incidental

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to his or her overall compensation, for activities related to the sale or offering of portable electronics insurance. A vendor of portable electronics may bill and collect the charges for portable electronics insurance coverage under the requirements set in the bill. The insurer, or supervising entity hired by the insurer, may compensate the vendor for its billing and collection services.

The bill requires the vendor to make available for customers a brochure or other written material that discloses all of the following: 1) that portable electronics insurance may duplicate coverage already provided by a customer's other insurance; 2) that a customer is not required to enroll in portable electronics insurance as a condition of purchasing or leasing a portable electronics device; 3) a summary of the material terms of the portable electronics coverage including the identity of the insurer, the identity of any supervising entity, the amount of the deductible and how to pay that deductible, the benefits of coverage, and the key terms and conditions of coverage; 4) a summary of the process for filing a claim; and 5) that the enrolled customer may cancel enrollment for coverage under a portable electronics insurance policy at any time and that upon cancellation the person paying the premium receives a refund of any applicable unearned premium.

Under the bill, the insurer is required to establish eligibility and underwriting standards for customers electing to enroll in coverage for each portable electronics insurance program. An insurer may terminate or otherwise change the terms and conditions of a portable electronics insurance policy only after providing the policyholder and all enrolled customers at least 30 days' notice before the termination or change except that an insurer may terminate enrollment of a customer after providing 15 days' notice when the enrolled customer committed fraud or made a material misrepresentation in obtaining coverage or presenting a claim and an insurer may terminate immediately the enrollment of a customer for nonpayment of the premium or if the customer ceases to have active service with the vendor. The bill allows an insurer to terminate the enrollment of a customer under a portable electronics insurance policy if the customer exhausts the aggregate limit of liability under the policy's terms and if the insurer sends notice of the termination within 30 days after exhaustion of the limit. If the insurer does not send the notice in a timely manner, the insurer must continue coverage, notwithstanding the aggregate limit of liability, until the insurer sends the notice. If the vendor of portable electronics terminates the insurance policy, the vendor shall provide written notice to each enrolled customer advising of the termination at least 30 days before the termination. The bill also sets requirements for providing notice or correspondence that is required under the provisions of the bill.

For further information see the *state* fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

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1 628.02 (1) (b) 9. A vendor, as defined in s. 632.975 (1) (i), or an employee or
2 authorized representative of a vendor selling or offering portable electronics
3 insurance under s. 632.975.

4 **SECTION 2.** 632.975 of the statutes is created to read:

5 **632.975 Portable electronics insurance. (1) DEFINITIONS.** In this section:

6 (a) “Customer” means a person who purchases a portable electronic device.

7 (b) “Enrolled customer” means a customer who elects coverage under a portable
8 electronics insurance policy issued to a vendor of portable electronics.

9 (c) “Location” means any physical location in the state or any Internet site, call
10 center site, or similar location directed to residents of the state.

11 (d) “Portable electronics” or “portable electronic devices” means electronic
12 devices that are portable in nature, including accessories and services related to the
13 use of the device.

14 (e) 1. “Portable electronics insurance” means insurance providing coverage for
15 the repair or replacement of portable electronics that may provide coverage for a
16 portable electronic device against any of the following causes of loss:

17 a. Loss.

18 b. Theft.

19 c. Inoperability due to mechanical failure.

20 d. Malfunction.

21 e. Damage.

22 f. Other similar causes of loss.

23 2. “Portable electronics insurance” does not include any of the following:

24 a. A service contract or extended warranty providing coverage limited to the
25 repair, replacement, or maintenance of property for the operational or structural

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1 failure of property due to a defect in materials, workmanship, accidental damage
2 from handling, power surges, or normal wear and tear.

3 b. A policy of insurance covering a vendor's or a manufacturer's obligations
4 under a warranty.

5 c. A homeowner's, renter's, private passenger automobile, commercial
6 multi-peril, or similar insurance policy.

7 (f) "Portable electronics insurance program" means the coverage options made
8 available to customers of a vendor who elect to enroll for coverage of a portable
9 electronic device under a policy of portable electronics insurance.

10 (g) "Portable electronics transaction" means the sale or lease of a portable
11 electronic device to a customer.

12 (h) "Supervising entity" means a business entity that is a licensed insurer or
13 licensed intermediary that is appointed by an insurer to supervise the
14 administration of a portable electronics insurance program offered by a vendor to its
15 customers.

16 (i) "Vendor" means a person in the business of engaging in portable electronics
17 transactions directly or indirectly.

18 **(2) AUTHORITY.** (a) *Requirements.* A vendor or an employee or authorized
19 representative of a vendor may sell or offer portable electronics insurance to
20 customers without holding a certificate of authority under s. 601.04 or a license as
21 an intermediary only if all of the following apply:

22 1. The vendor complies with the requirements of this section.

23 2. The insurer issuing the portable electronics insurance either directly
24 supervises, or appoints a supervising entity to supervise, the administration of the
25 sale of portable electronics insurance, including development of a training program,

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1 as described under sub. (4), for employees and authorized representatives of the
2 vendors.

3 3. The supervising entity, if any, maintains a registry of vendor locations at
4 which an employee or authorized representative is authorized to sell or offer portable
5 electronics insurance in this state. Upon request by the commissioner after
6 providing 10 days' notice to the supervising entity, the supervising entity shall make
7 available the registry for inspection and examination by the commissioner.

8 4. Any employee or authorized representative who intends to sell or offer
9 portable electronics insurance to customers shall complete a training program under
10 sub. (4).

11 (b) *Prohibited representations.* No employee or authorized representative of a
12 vendor of portable electronics may advertise, represent, or otherwise hold himself or
13 herself out as a licensed insurance intermediary, if the employee or authorized
14 representative does not hold a license as an intermediary in this state.

15 (c) *Scope.* Compliance by a vendor with this section shall authorize any
16 employee or authorized representative of a vendor to sell or offer coverage under a
17 policy of portable electronics insurance to a customer at each location at which the
18 vendor engages in portable electronics transactions.

19 **(3) PENALTIES.** If a vendor of portable electronics or an employee or authorized
20 representative of a vendor violates any provision of this section, the commissioner
21 may do any of the following:

22 (a) After notice and hearing, impose forfeitures not to exceed \$500 per violation
23 or \$5,000 in the aggregate for violations.

24 (b) Order, under s. 601.41 (4), any of the following:

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1 1. Suspension of the selling or offering of portable electronics insurance at the
2 specific business location where the violation occurred.

3 2. Suspension of the selling or offering of portable electronics insurance by an
4 employee or authorized representative of a vendor.

5 **(4) TRAINING.** The insurer or supervising entity shall develop and administer
6 the training program required under sub. (2) (a) 4. that complies with all of the
7 following:

8 (a) The insurer or supervising entity shall deliver training to employees and
9 authorized representatives of a vendor who are directly engaged in selling or offering
10 portable electronics insurance.

11 (b) The insurer or supervising entity may provide the training in electronic
12 form. If the training is in electronic form, the insurer or supervising entity shall
13 implement a supplemental education program regarding portable electronics
14 insurance that is conducted and overseen by licensed employees of the insurer or
15 supervising entity.

16 (c) The insurer or supervising entity shall provide to every employee and
17 authorized representative of a vendor basic instruction about the portable
18 electronics insurance offered to customers and the disclosures required under sub.
19 (6).

20 **(5) COMPENSATION.** (a) A vendor of portable electronics may not compensate an
21 employee or authorized representative based primarily on the number of customers
22 enrolled in portable electronics insurance coverage but the vendor may compensate
23 an employee or authorized representative, in a manner that is incidental to his or her
24 overall compensation, for activities related to the sale or offering of portable
25 electronics insurance.

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1 (b) 1. A vendor of portable electronics may bill and collect the charges for
2 portable electronics insurance coverage.

3 2. The vendor shall separately itemize on the enrolled customer's bill any
4 charge to the enrolled customer for coverage that is not included in the cost
5 associated with the purchase or lease of the portable electronics.

6 3. If the portable electronics insurance coverage is included with the purchase
7 or lease of a portable electronic device, the vendor shall clearly and conspicuously
8 disclose to the enrolled customer that the coverage is included with the purchase or
9 lease of the portable electronic device.

10 4. A vendor that bills and collects charges from an enrolled customer is not
11 required to maintain those moneys in a segregated account if the insurer authorizes
12 the vendor to hold those moneys in a manner other than a segregated account and
13 if the vendor remits the moneys to the insurer or supervising entity within 60 days
14 of receiving those moneys. The vendor shall consider all moneys received by that
15 vendor from an enrolled customer for the sale of portable electronics insurance to be
16 held in trust by that vendor in a fiduciary capacity for the benefit of the insurer.

17 5. The insurer or supervising entity may compensate the vendor for billing and
18 collection services.

19 **(6) DISCLOSURES.** At every location where portable electronics insurance is
20 offered to customers, a vendor shall make available to prospective customers
21 brochures or other written materials that contain all of the following:

22 (a) A disclosure that portable electronics insurance may provide a duplication
23 of coverage already provided by a customer's homeowner's insurance policy, renter's
24 insurance policy, or other source of insurance coverage.

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1 (b) A statement that a customer is not required to enroll in portable electronics
2 insurance as a condition of purchasing or leasing a portable electronic device.

3 (c) A summary of the material terms of the portable electronics insurance
4 coverage including all of the following:

5 1. The identity of the insurer.

6 2. The identity of the supervising entity, if any.

7 3. The amount of any applicable deductible and how to pay that deductible.

8 4. The benefits of coverage.

9 5. The key terms and conditions of coverage such as whether a portable
10 electronic device covered under the policy may be repaired or replaced with parts or
11 equipment of a similar make and model that are reconditioned or are nonoriginal
12 manufacturer parts or equipment.

13 (d) A summary of the process for filing a claim, including a description of how
14 to return a portable electronic device and the maximum fee applicable in the event
15 the enrolled customer fails to comply with any equipment return requirement.

16 (e) A statement that the enrolled customer may cancel enrollment for coverage
17 under a portable electronics insurance policy at any time and that upon cancellation
18 the person paying the premium receives a refund of any applicable unearned
19 premium.

20 **(7) PERMITTED OFFERING.** A vendor may offer portable electronics insurance on
21 a month to month or other periodic basis as a group or master commercial inland
22 marine policy that is issued to a vendor of portable electronics for its enrolled
23 customers.

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1 **(8) UNDERWRITING.** An insurer shall establish eligibility and underwriting
2 standards for customers electing to enroll in coverage for each portable electronics
3 insurance program offered by a vendor to its customers.

4 **(9) TERMINATION OF INSURANCE; CHANGES TO POLICY.** (a) Except as provided in
5 par. (c), an insurer may terminate or otherwise change the terms and conditions of
6 a policy of portable electronics insurance only after providing the policyholder and
7 all enrolled customers at least 30 days' notice before terminating the coverage or
8 making the change.

9 (b) If the insurer changes the terms and conditions in accordance with par. (a),
10 the insurer shall provide the vendor policyholder with a revised policy or
11 endorsement and shall provide each enrolled customer a revised certificate,
12 endorsement, updated brochure, or other evidence indicating that a change in the
13 terms and conditions has occurred and a summary of the material changes.

14 (c) 1. An insurer may terminate the enrollment of an enrolled customer under
15 a portable electronics insurance policy after providing 15 days' notice if the insurer
16 discovers that the enrolled customer committed fraud or made a material
17 misrepresentation in obtaining coverage or in the presentation of a claim under the
18 portable electronics insurance policy.

19 2. An insurer may immediately terminate the enrollment of an enrolled
20 customer under a portable electronics insurance policy for any of the following
21 reasons:

22 a. The enrolled customer fails to pay the premium for the portable electronics
23 insurance policy.

24 b. The enrolled customer ceases to have an active service with the vendor of
25 portable electronics.

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1 3. An insurer may terminate the enrollment of an enrolled customer under a
2 portable electronics insurance policy if the enrolled customer exhausts any
3 aggregate limit of liability under the terms of the portable electronics insurance
4 policy and the insurer sends notice of termination to the enrolled customer within
5 30 days after exhaustion of the limit. If the insurer does not send the notice within
6 30 days after exhaustion of the limit, the insurer shall continue the coverage
7 notwithstanding the aggregate limit of liability until the insurer sends notice of
8 termination to the enrolled customer.

9 (d) If a portable electronics insurance policy is terminated by a vendor that
10 owns the policy, the vendor shall mail or deliver, at least 30 days before the
11 termination, written notice to each enrolled customer advising of the termination of
12 the portable electronics insurance policy and the effective date of termination.

13 (e) Any notice or correspondence with respect to coverage under a policy of
14 portable electronics insurance that is required under this section or is otherwise
15 required by law shall be in writing and may be mailed to the vendor at the mailing
16 address of the vendor and to the enrolled customers at their last known mailing
17 addresses on file with the insurer or delivered by electronics means to the vendor and
18 enrolled customers. If the notice or correspondence is mailed, the insurer, or vendor,
19 that mailed the notice or correspondence, shall maintain proof of mailing in a form
20 authorized or accepted by the U.S. postal service or other commercial mail delivery
21 service. If delivery of the notice or correspondence is by electronic means, the insurer
22 shall use the electronic mail address specified by the vendor for that purpose and the
23 insurer, or vendor, shall use the last known electronic mail address provided by each
24 enrolled customer. An enrolled customer who provides an electronic mail address to
25 the insurer or vendor consents to receive notices and correspondence by electronic

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1 means. If delivery is by electronic means, the insurer or vendor, whichever delivers
2 the notice or correspondence, shall maintain proof of delivery.

3 (f) A supervising entity may send any notice or correspondence required by this
4 section or otherwise required by law. An insurer or vendor is not required to provide
5 the notice or correspondence if it is provided by a supervising entity in a manner that
6 complies with this section.

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(END)